

AMENDED IN ASSEMBLY MAY 6, 2009

AMENDED IN ASSEMBLY APRIL 15, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 819

Introduced by Assembly Member Charles Calderon
(Coauthor: Assembly Member Lieu Coauthors: Assembly Members
Lieu, Portantino, and Smyth)

February 26, 2009

An act to amend Sections 13848 and 13848.6 of, and to add Chapter 5.8 (commencing with Section 13849) to Title 6 of Part 4 of, the Penal Code, relating to intellectual property piracy, *making an appropriation therefor*, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 819, as amended, Charles Calderon. Intellectual property piracy.

Existing law establishes various crime prevention and prosecution programs.

This bill would establish the Intellectual Property Piracy Prevention and Prosecution Program to fund grants for local law enforcement and district attorneys for purposes of preventing and prosecuting intellectual property piracy, as specified.

The bill would establish the Intellectual Property Piracy Prevention and Prosecution Fund, *which would be continuously appropriated and which would be funded by private and state sources, including an annual appropriation from the General Fund to bring the balance in the fund to \$50 million*. This bill would become operative only if AB 711 of the 2009–10 Regular Session is enacted. The bill would make other technical, conforming changes.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: ~~no~~-yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13848 of the Penal Code is amended to
2 read:

3 13848. (a) It is the intent of the Legislature in enacting this
4 chapter to provide local law enforcement and district attorneys
5 with the tools necessary to successfully interdict the promulgation
6 of high technology crime. According to the federal Law
7 Enforcement Training Center, it is expected that states will see a
8 tremendous growth in high technology crimes over the next few
9 years as computers become more available and computer users
10 more skilled in utilizing technology to commit these faceless
11 crimes. High technology crimes are those crimes in which
12 technology is used as an instrument in committing, or assisting in
13 the commission of, a crime, or which is the target of a criminal
14 act.

15 (b) Funds provided under this program are intended to ensure
16 that law enforcement is equipped with the necessary personnel
17 and equipment to successfully combat high technology crime which
18 includes, but is not limited to, the following offenses:

19 (1) White-collar crime, such as check, automated teller machine,
20 and credit card fraud, committed by means of electronic or
21 computer-related media.

22 (2) Unlawful access, destruction of or unauthorized entry into
23 and use of private, corporate, or government computers and
24 networks, including wireless and wireline communications
25 networks and law enforcement dispatch systems, and the theft,
26 interception, manipulation, destruction, or unauthorized disclosure
27 of data stored within those computers and networks.

28 (3) Money laundering accomplished with the aid of computer
29 networks or electronic banking transfers.

30 (4) Theft and resale of telephone calling codes, theft of
31 telecommunications service, theft of wireless communication
32 service, and theft of cable television services by manipulation of
33 the equipment used to receive those services.

1 (5) Theft and resale of computer components and other high
2 technology products produced by the high technology industry.

3 (6) Remarketing and counterfeiting of computer hardware and
4 software.

5 (7) Theft of trade secrets.

6 (c) This program is also intended to provide support to law
7 enforcement agencies by providing technical assistance to those
8 agencies with respect to the seizure and analysis of computer
9 systems used to commit high technology crimes or store evidence
10 relating to those crimes.

11 SEC. 2. Section 13848.6 of the Penal Code is amended to read:

12 13848.6. (a) The High Technology Crime Advisory Committee
13 is hereby established for the purpose of formulating a
14 comprehensive written strategy for addressing high technology
15 crime throughout the state, with the exception of crimes that occur
16 on state property or are committed against state employees, and
17 to advise the California Emergency Management Agency on the
18 appropriate disbursement of funds to regional task forces.

19 (b) This strategy shall be designed to be implemented through
20 regional task forces. In formulating that strategy, the committee
21 shall identify various priorities for law enforcement attention,
22 including the following goals:

23 (1) To apprehend and prosecute criminal organizations,
24 networks, and groups of individuals engaged in the following
25 activities:

26 (A) Theft of computer components and other high technology
27 products.

28 (B) Violations of Penal Code Sections 211, 350, 351a, 459, 496,
29 537e, 593d, 593e, 653h, 653s, and 635w.

30 (C) Theft of telecommunications services and other violations
31 of Penal Code Sections 502.7 and 502.8.

32 (D) Counterfeiting of negotiable instruments and other valuable
33 items through the use of computer technology.

34 (2) To apprehend and prosecute individuals and groups engaged
35 in the unlawful access, destruction, or unauthorized entry into and
36 use of private, corporate, or government computers and networks,
37 including wireless and wire line communications networks and
38 law enforcement dispatch systems, and the theft, interception,
39 manipulation, destruction, and unauthorized disclosure of data
40 stored within those computers.

- 1 (3) To apprehend and prosecute individuals and groups engaged
2 in the theft of trade secrets.
- 3 (4) To investigate and prosecute high technology crime cases
4 requiring coordination and cooperation between regional task
5 forces and local, state, federal, and international law enforcement
6 agencies.
- 7 (c) The Secretary of California Emergency Management shall
8 appoint the following members to the committee:
- 9 (1) A designee of the California District Attorneys Association.
10 (2) A designee of the California State Sheriffs Association.
11 (3) A designee of the California Police Chiefs Association.
12 (4) A designee of the Attorney General.
13 (5) A designee of the California Highway Patrol.
14 (6) A designee of the High Technology Crime Investigation
15 Association.
16 (7) A designee of the California Emergency Management
17 Agency.
18 (8) A designee of the American Electronic Association to
19 represent California computer system manufacturers.
20 (9) A designee of the American Electronic Association to
21 represent California computer software producers.
22 (10) A designee of CTIA - The Wireless Association.
23 (11) A representative of the California Internet industry.
24 (12) A designee of the Semiconductor Equipment and Materials
25 International.
26 (13) A designee of the California Cable & Telecommunications
27 Association.
28 (14) A designee of the Motion Picture Association of America.
29 (15) A designee of the California Communications Associations
30 (CalCom).
31 (16) A representative of the California banking industry.
32 (17) A representative of the Office of Information Security and
33 Privacy Protection.
34 (18) A representative of the Department of Finance.
35 (19) A representative of the State Chief Information Officer.
36 (20) A representative of the Recording Industry of America.
37 (21) A representative of the Consumers Union.
- 38 (d) The Secretary of California Emergency Management shall
39 designate the Chair of the High Technology Crime Advisory
40 Committee from the appointed members.

1 (e) The advisory committee shall not be required to meet more
2 than 12 times per year. The advisory committee may create
3 subcommittees of its own membership, and each subcommittee
4 shall meet as often as the subcommittee members find necessary.
5 It is the intent of the Legislature that all advisory committee
6 members shall actively participate in all advisory committee
7 deliberations required by this chapter.

8 Any member who, without advance notice to the Secretary of
9 California Emergency Management and without designating an
10 alternative representative, misses three scheduled meetings in any
11 calendar year for any reason other than severe temporary illness
12 or injury (as determined by the secretary) shall automatically be
13 removed from the advisory committee. If a member wishes to send
14 an alternative representative in his or her place, advance written
15 notification of this substitution shall be presented to the executive
16 director. This notification shall be required for each meeting the
17 appointed member elects not to attend.

18 Members of the advisory committee shall receive no
19 compensation for their services, but shall be reimbursed for travel
20 and per diem expenses incurred as a result of attending meetings
21 sponsored by the California Emergency Management Agency.

22 (f) The Secretary of California Emergency Management, in
23 consultation with the High Technology Crime Advisory
24 Committee, shall develop specific guidelines and administrative
25 procedures for the selection of projects to be funded by the High
26 Technology Theft Apprehension and Prosecution Program, which
27 guidelines shall include the following selection criteria:

28 (1) Each regional task force that seeks funds shall submit a
29 written application to the committee setting forth in detail the
30 proposed use of the funds.

31 (2) In order to qualify for the receipt of funds, each proposed
32 regional task force submitting an application shall provide written
33 evidence that the agency meets either of the following conditions:

34 (A) The regional task force devoted to the investigation and
35 prosecution of high technology-related crimes is comprised of
36 local law enforcement and prosecutors, and has been in existence
37 for at least one year prior to the application date.

38 (B) At least one member of the task force has at least three years
39 of experience in investigating or prosecuting cases of suspected
40 high technology crime.

1 (3) Each regional task force shall be identified by a name that
2 is appropriate to the area that it serves. In order to qualify for funds,
3 a regional task force shall be comprised of local law enforcement
4 and prosecutors from at least two counties. At the time of funding,
5 the proposed task force shall also have at least one investigator
6 assigned to it from a state law enforcement agency. Each task force
7 shall be directed by a local steering committee composed of
8 representatives of participating agencies and members of the local
9 high technology industry.

10 (4) The California High Technology Crimes Task Force shall
11 be comprised of each regional task force developed pursuant to
12 this subdivision.

13 (5) Additional criteria that shall be considered by the advisory
14 committee in awarding grant funds shall include, but not be limited
15 to, the following:

16 (A) The number of high technology crime cases filed in the
17 prior year.

18 (B) The number of high technology crime cases investigated in
19 the prior year.

20 (C) The number of victims involved in the cases filed.

21 (D) The total aggregate monetary loss suffered by the victims,
22 including individuals, associations, institutions, or corporations,
23 as a result of the high technology crime cases filed, and those under
24 active investigation by that task force.

25 (6) Each regional task force that has been awarded funds
26 authorized under the High Technology Theft Apprehension and
27 Prosecution Program during the previous grant-funding cycle,
28 upon reapplication for funds to the committee in each successive
29 year, shall be required to submit a detailed accounting of funds
30 received and expended in the prior year in addition to any
31 information required by this section. The accounting shall include
32 all of the following information:

33 (A) The amount of funds received and expended.

34 (B) The use to which those funds were put, including payment
35 of salaries and expenses, purchase of equipment and supplies, and
36 other expenditures by type.

37 (C) The number of filed complaints, investigations, arrests, and
38 convictions that resulted from the expenditure of the funds.

39 (g) The committee shall annually review the effectiveness of
40 the California High Technology Crimes Task Force in deterring,

1 investigating, and prosecuting high technology crimes and provide
2 its findings in a report to the Legislature and the Governor. This
3 report shall be based on information provided by the regional task
4 forces in an annual report to the committee which shall detail the
5 following:

6 (1) Facts based upon, but not limited to, the following:

7 (A) The number of high technology crime cases filed in the
8 prior year.

9 (B) The number of high technology crime cases investigated in
10 the prior year.

11 (C) The number of victims involved in the cases filed.

12 (D) The number of convictions obtained in the prior year.

13 (E) The total aggregate monetary loss suffered by the victims,
14 including individuals, associations, institutions, corporations, and
15 other relevant public entities, according to the number of cases
16 filed, investigations, prosecutions, and convictions obtained.

17 (2) An accounting of funds received and expended in the prior
18 year, which shall include all of the following:

19 (A) The amount of funds received and expended.

20 (B) The uses to which those funds were put, including payment
21 of salaries and expenses, purchase of supplies, and other
22 expenditures of funds.

23 (C) Any other relevant information requested.

24 SEC. 3. Chapter 5.8 (commencing with Section 13849) is added
25 to Title 6 of Part 4 of the Penal Code, to read:

26

27 CHAPTER 5.8. INTELLECTUAL PROPERTY PIRACY PREVENTION
28 AND PROSECUTION ACT OF 2009

29

30 13849. (a) This act shall be known and may be cited as the
31 Intellectual Property Piracy Prevention and Prosecution Act of
32 2009.

33 (b) The Legislature finds and declares the following:

34 (1) According to a 2007 study by the Institute for Policy
35 Innovation, intellectual property piracy, meaning the theft of
36 movies, music, software, and video games, costs the United States
37 economy fifty-eight billion dollars (\$58,000,000,000) each year.

38 (2) The problem of intellectual property piracy continues to
39 grow worse. A 2005 Gallup study found that 5 percent of
40 Americans had purchased, copied, or downloaded counterfeit music

1 in the preceding year. By 2007, this number had jumped to 9
2 percent. The percentage of respondents that admitted buying a
3 pirated movie rose from 3 percent in 2005, to 6 percent in 2007.
4 At the same time, once robust DVD sales have flattened over the
5 past few years, while CD shipments to retailers have plummeted.

6 (3) The effect of intellectual property piracy on California and
7 its citizens is particularly dire. Intellectual property piracy
8 adversely affects the California economy, eliminates jobs, and
9 damages industry. According to the Business Software Alliance,
10 in 2003, software piracy alone cost the California economy more
11 than 13,000 jobs, over eight hundred two million dollars
12 (\$802,000,000) in wages and salaries, over one billion dollars
13 (\$1,000,000,000) in retail sales of business software applications,
14 and roughly two hundred thirty-nine million dollars (\$239,000,000)
15 in total tax losses.

16 (4) This act will send a strong signal that California is committed
17 to protecting the intellectual property created by California's
18 innovation and entertainment industries.

19 (5) By creating a technical advisory committee, California will
20 be able to draw upon the expertise and insight of those on the front
21 lines of the antipiracy effort.

22 (6) Grants awarded pursuant to this act will be used to foster
23 innovation and to provide local law enforcement and prosecutors
24 the tools they need to effectively fight intellectual property piracy.

25 (7) Finally, by safeguarding the legitimate sale of intellectual
26 property, California will increase its tax base, and stimulate the
27 economy.

28 (c) Funds provided under this program are intended to ensure
29 that law enforcement and prosecutors are equipped with the
30 necessary personnel and equipment to combat successfully
31 intellectual property piracy, which includes piracy of movies,
32 music, software, and video games.

33 13849.1. (a) There is hereby established in the Department of
34 Justice, a program of financial assistance for law enforcement and
35 district attorneys' offices, designated the Intellectual Property
36 Piracy Prevention and Prosecution Program. Upon appropriation
37 by the Legislature, all funds appropriated to the Department of
38 Justice for the purposes of this chapter shall be administered and
39 disbursed by the Attorney General in consultation with the
40 Intellectual Property Piracy Prevention and Prosecution Advisory

1 Committee as established in Section 13849.3 and shall, to the
2 extent feasible, be coordinated with funds derived pursuant to
3 Section 13849.3 and private grants or private donations that are
4 made available for these purposes.

5 (b) All funds designated for use for purposes of this chapter
6 shall be deposited in the Intellectual Property Piracy Prevention
7 and Prosecution Fund, which is hereby established. The fund shall
8 be under the direction and control of the office of the Attorney
9 General. ~~The fund may also accept private donations~~ General.
10 *Notwithstanding Section 13340 of the Government Code, moneys*
11 *in the fund are hereby continuously appropriated for the purposes*
12 *specified in this chapter. The fund may also accept private*
13 *donations.*

14 (c) The advisory committee shall review grant applications and,
15 on a majority vote of the membership, submit those applications
16 to the Attorney General for formal approval.

17 (d) The advisory committee shall monitor and audit the use of
18 grant funds.

19 (e) Grant money shall be used exclusively to combat intellectual
20 property piracy within the state. Grants shall be made on an annual
21 basis, and may not be used to pay existing staff, absent
22 extraordinary circumstances and approval by the Attorney General.
23 Grant recipients may receive funding for no more than three years
24 without submitting another grant application. Grants shall only be
25 made to applicants with an existing budget dedicated to fighting
26 intellectual property piracy.

27 (f) In order to receive a grant, prospective recipients shall agree
28 in writing to the following terms, as conditions of receiving a grant:

29 (1) The recipient is authorized to accept grant funds under all
30 applicable state and local laws.

31 (2) The recipient will vigilantly safeguard grant funds and ensure
32 that use of the grant funds fully comports with the purposes
33 specified in the application for the grant funds, as approved or
34 modified by the advisory committee.

35 (3) Grant funds shall be used to augment, but shall not be used
36 to supplant, a grant recipient's budget.

37 (4) If the grant funds are used for the purpose of investigation,
38 litigation, or prosecution, any remedy, settlement, judgment, or
39 restitution award shall provide for full reimbursement to the

1 Intellectual Property Piracy Protection and Prosecution Fund of
2 all grant funds used for that investigation, litigation, or prosecution.

3 (5) The recipient shall notify the advisory committee in writing
4 of litigation or prosecution results, including any settlement,
5 judgment, or other resolution, within 30 days.

6 (6) The recipient shall notify the advisory committee in writing
7 of the status of all outstanding investigations, litigation, or
8 prosecutions funded in whole or in part by the grant six months
9 after the funds are disbursed, and every 12 months thereafter until
10 all disbursed funds have been expended and reported on.

11 (7) The recipient shall fully cooperate with the advisory
12 committee and its agents in providing all information and
13 documents concerning the use of grant funds.

14 (8) Except as otherwise expressly agreed by the advisory
15 committee, within 60 days after the conclusion of the investigation,
16 litigation, or prosecution, training, or other activity for which the
17 disbursement was awarded, the recipient shall return all unused
18 funds to the advisory committee by check made payable to the
19 Intellectual Property Piracy Prevention and Prosecution Fund.

20 (9) If grant funds are used for the production of any materials,
21 the recipient shall permit the Attorney General's office and the
22 advisory committee to use and distribute those materials without
23 restriction, for their intended purposes.

24 (10) The advisory committee is authorized to audit, review, and
25 inspect the recipient's activities, books, documents, papers, and
26 records during the project and thereafter for three years following
27 the final allocation of funds.

28 13849.2. (a) The Intellectual Property Piracy Prevention and
29 Prosecution Advisory Committee is hereby established for the
30 purpose of formulating a comprehensive written strategy for
31 addressing intellectual property piracy prevention and prosecution
32 throughout the state, and to advise the Attorney General on the
33 appropriate disbursement of funds to local law enforcement
34 agencies and district attorneys' offices.

35 (b) In formulating that strategy, the committee shall identify
36 various priorities for law enforcement attention regarding the
37 following:

38 (1) The apprehension and prosecution of criminal organizations,
39 networks, and groups of individuals engaged in the theft of,

1 counterfeiting of, or unauthorized distribution, sale, or reproduction
2 of, the following types of intellectual property:

- 3 (A) Movies.
- 4 (B) Music.
- 5 (C) Computer software.
- 6 (D) Video games.

7 (2) The investigation and prosecution of violations of criminal
8 and civil provisions of law, including, but not limited to, Sections
9 653h, 653s, and 653w.

10 (3) The advising of local law enforcement and district attorneys
11 regarding current aspects of intellectual property piracy, in order
12 to respond quickly to the most serious threats of piracy.

13 (c) The advisory committee, which shall meet at least four times
14 per year, shall consist of 10 members, of whom six shall be
15 appointed by the Governor, two by the Speaker of the Assembly,
16 and two by the Senate Committee on Rules. Members shall be
17 paid a one hundred dollar (\$100) per diem for each meeting, as
18 well as all necessary travel expenses. The advisory committee shall
19 be composed of the following members:

- 20 (1) At least two representatives of the general public.
- 21 (2) At least one representative with demonstrable knowledge
22 of the movie industry.
- 23 (3) At least one representative with demonstrable knowledge
24 of the music industry.
- 25 (4) At least one representative with demonstrable knowledge
26 of the computer software industry.
- 27 (5) At least one representative with demonstrable knowledge
28 of the video gaming industry.
- 29 (6) At least one representative with experience in law
30 enforcement, specifically relating to intellectual property piracy
31 offenses.
- 32 (7) At least one representative with experience prosecuting
33 intellectual property piracy offenses at the local, state, or federal
34 level.

35 (d) In deciding which grant applications to fund, the advisory
36 committee shall consider the following factors:

- 37 (1) The purpose for which the funds are sought.
- 38 (2) The proposal's specificity, including whether the proposal
39 identifies anticipated costs, along with materials and personnel to
40 be used.

1 (3) The anticipated public benefit.

2 (4) The ability of the advisory committee to audit the use of the
3 funds.

4 (5) The number, amount, and use of previous grants awarded
5 to the prospective recipient, if any.

6 (e) Members of the advisory committee shall be entitled to the
7 same immunity from liability that is provided to public employees.

8 *13849.3. On July 1, 2010, and every July 1 thereafter, the*
9 *Legislature hereby appropriates from the General Fund to the*
10 *Intellectual Property Piracy Prevention and Prosecution Fund a*
11 *sum sufficient to bring the balance in the Intellectual Property*
12 *Piracy Prevention and Prosecution Fund to fifty million dollars*
13 *(\$50,000,000). In no event shall an annual appropriation from the*
14 *General Fund be made if the fund has a balance of fifty million*
15 *dollars (\$50,000,000) or more.*

16 SEC. 4. This act shall become operative only if upon enactment
17 of Assembly Bill 711 of the 2009–10 Regular Session is enacted.

18 SEC. 5. This act is an urgency statute necessary for the
19 immediate preservation of the public peace, health, or safety within
20 the meaning of Article IV of the Constitution and shall go into
21 immediate effect. The facts constituting the necessity are:

22 In order to ensure public peace against the accelerating problem
23 of intellectual property piracy, it is necessary for this act to take
24 effect immediately.